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In the matter of:

JAMES M. NELLE AND  
ROOF ONE EXTERIORS, LLC ,

Respondents.

ASSURANCE OF VOLUNTARY  
COMPLIANCE

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1. The State of Iowa ex rel. Attorney General Thomas J. Miller, by Assistant Attorney General Benjamin E. Bellus (hereinafter "Attorney General"), and Roof One Exteriors, LLC and James M. Nelle (hereinafter "Respondents"), represented by attorney David W. Nelmark; hereby enter into this Assurance of Voluntary Compliance (hereinafter "Assurance"), pursuant to Iowa Code section 714.16, the Iowa Consumer Fraud Act, relating to Respondents' business practices.

2. Thomas J. Miller is the duly elected Attorney General of Iowa. The Attorney General of Iowa is expressly authorized pursuant to Iowa Code §§ 103A.71(6)(b), 555A.6(2) and 714.16(7) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 103A.71 and/or Iowa Code Chapter 555A and/or Iowa Code § 714.16. The Attorney General of Iowa is also expressly authorized pursuant to Iowa Code §§ 537.6110 and 537.6113 to file a civil action against any person who has engaged in a practice declared to be violation under Iowa Code Chapter 537.

3. Respondent James M. Nelle is the owner, president, operator, managing agent and registered agent of a home repair and contractor business incorporated in Iowa under the name of Roof One Exteriors, LLC. Respondent Nelle does business in several states, including Missouri, Michigan, Kentucky and Iowa. At the times relevant to this action, his primary business office in Iowa was located at 2751 Heritage Drive, Winterset, Iowa. Respondent Nelle is named in his individual capacity as well as his past or present corporate capacities.

4. Respondent Nelle formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Roof One Exteriors, LLC, constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an owner, officer, director, and/or agent of Roof One Exteriors, LLC.

5. Respondent Roof One Exteriors, LLC is a home repair and contractor business incorporated in Iowa which does business in multiple states. At all times relevant to this action, the primary business office of Roof One Exteriors, LLC was located 2751 Heritage Drive, Winterset, Iowa.

6. The phrase “home repairs or contractor services”, as used herein, includes any work on any residential dwelling or other structure; and any work on other things commonly found on residential real property including, but not limited to, garages, basements, interiors, roofs, siding, windows, porches, driveways, sidewalks, patios and fences.

7. Unless otherwise specified, the term “Respondents” as referred to herein includes James M. Nelle and Roof One Exteriors, LLC incorporated in Iowa; as well as any corporate name or trade name under which they operated, or are operating, a business in Iowa; and their representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by James M. Nelle or Roof One Exteriors, LLC.

8. The Attorney General alleges that Respondents violated Iowa Code § 103A.71 (Iowa State Building Code Act, Division V) in a manner including, but not limited to, selling home repairs or contractor services to correct damage caused by a “catastrophe”<sup>1</sup> and negotiating on behalf of the

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<sup>1</sup> Iowa Code § 103A.71(1)(a) defines “catastrophe” as “a natural occurrence including but not limited to fire, earthquake, tornado, windstorm, flood, or hail storm, which damages or destroys residential real estate.”

owner of real estate on an insurance claim in connection with the repair or replacement of roof systems, or the performance of other exterior repair, exterior reconstruction, or exterior reconstruction work on residential real estate. Iowa Code § 103A.71(3).<sup>2</sup>

9. The Attorney General alleges that Respondents violated Iowa Code Chapter 555A (Iowa Door-To-Door Sales Act) in a manner including, but not limited to, selling home repairs or contractor services at a place other than the Respondents' place of business and:

- a. failing to disclose the consumers' right to cancel in 10 point boldface type on the front of the contract or receipt, Iowa Code § 555A.2;
- b. failing to deliver a fully completed copy of the contract to the consumers at the time of execution, Iowa Code § 555A.2;
- c. failing to include the Respondents' address on the consumer contracts, Iowa Code § 555A.2;
- d. failing to provide the consumer with a "Notice of Cancellation" drafted with the required form and content, Iowa Code § 555A.3;
- e. failing to furnish to the consumer two copies of the "Notice of Cancellation" which included the deadline date by which the consumers had to deliver their cancellation to the Respondents, Iowa Code § 555A.4(1); and
- f. failing to honor a valid notice of cancellation by consumers and refund all consumer payments within ten business days after the receipt of notice of cancellation, Iowa Code § 555A.4(5).

10. The Attorney General further alleges that Respondents violated Iowa Code § 714.16(2)(a) by:

- a. pursuant to Iowa Code § 103A.71(6)(b), committing the violations of Iowa Code § 103A.71(3) referenced in paragraph 8, above;
- b. pursuant to Iowa Code § 555A.6(2), committing the violations of Iowa Code Chapter 555A referenced in paragraph 9, above:

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<sup>2</sup> While not a claim alleged by the Attorney General in this matter, this conduct also constitutes acting as a public adjustor without proper licensure, in violation of Iowa Code Chapter 522C (Licensing of Public Adjustors).

- c. captioning a business form presented to consumers as an “estimate” but then enforcing the form as a binding contract after the consumers sign the form;
- d. obtaining consumers’ signatures on contracts which do not contain material contract terms such as scope of work, specific materials to be used, or total contract cost, and then subsequently demanding performance or payment under the contracts if the consumers reject the final contracts; and
- e. representing in the contracts that 25% of the total contract price will be the enforceable liquidated damages under the contracts when that amount does not bear a reasonable relationship to the compensatory damages anticipated to be sustained in the event of a cancellation of the contract.

11. The Attorney General further alleges that Respondents violated Iowa Code §§ 537.7103(1)(f) and 537.7103(4)(e) of Article 7 of the Iowa Consumer Credit Code (Iowa Debt Collection Practices Act) by stating that a lawsuit would be filed to collect on a consumer’s disputed debt when the Respondents had no intention of filing said lawsuit.<sup>3</sup>

12. Respondents deny the Attorney General's allegations but agree to entry of this Assurance.

13. In consideration for the Attorney General’s agreement to not file suit, Respondents James M. Nelle and Roof One Exteriors, LLC agree to the terms of this Assurance and agree that a violation of this Assurance will constitute a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16.

14. In consideration for the Attorney General’s agreement to not file suit, Respondents James M. Nelle and Roof One Exteriors, LLC agree that a court may impose a civil penalty of not more than \$5,000 for each day of intentional violation of this Assurance as provided pursuant to

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<sup>3</sup> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: ... The threat to take any action that cannot legally be taken or that is not intended to be taken. 15 U.S.C.A. § 1692e(5).

Iowa Code § 714.16(7), as if this Assurance was a permanent injunction issued under authority of Iowa Code § 714.16.

15. In consideration for the Attorney General's agreement to not file suit, Respondents James M. Nelle and Roof One Exteriors, LLC agree to the terms of this Assurance and agree that the following shall apply should a court find by a preponderance of the evidence that Respondents violated this Assurance:

- a. Respondents shall be permanently restrained and enjoined from owning, operating, controlling, directing, or otherwise profiting from any business in the State of Iowa that in any manner offers or provides home repairs or contractor services;
- b. Respondents shall also be permanently restrained and enjoined from advertising or offering any home repairs or contractor services to Iowa consumers, or entering into any contracts to provide home repairs or contractor services to Iowa consumers;
- c. Respondents shall also be permanently restrained and enjoined from advising, controlling, directing, or otherwise exercising any authority to any extent regarding a business which, in part or in whole, provides home repairs or contractor services, including, but not limited to business practices, hiring decisions, advertising strategies or the like; and
- d. Any order entered pursuant to this paragraph 15 shall be in addition to other remedies a court may order in the event of Respondents' non-compliance with this Assurance.

16. Respondents further agree to comply with the following terms from the date of the signing of this Assurance unless released by the Attorney General, or his designated agent, in writing:

- a. Respondents shall comply with all provisions of the Iowa State Building Code Act, Division V (Iowa Residential Contractors – Repairs and Insurance Law – Prohibited Practices), Iowa Code § 103A.71;
- b. Respondents shall comply with all provisions of the Iowa Debt Collection Practices Act, Article 7 of Iowa Code Chapter 537;

- c. Respondents shall comply with all provisions of the Iowa Door-To-Door Sales Act, Iowa Code Chapter 555A;
- d. Respondents shall refrain from obtaining consumer signatures for contracts which do not contain all material terms of the contracts (e.g. final price, scope of work, materials to be used, etc.), and then demanding performance or payment under the contracts if the consumers reject the contracts after Respondents inserted additional material terms;
- e. Respondents shall refrain from obtaining consumer signatures on documents which do not clearly, conspicuously and unambiguously disclose to consumers that Respondents intend to enforce the documents as binding contracts, and then demanding performance or payment under the contracts if the consumers subsequently reject the contracts; and
- f. Respondents shall refrain from including provisions in consumer contracts which materially misrepresent the legal rights of either party under the contracts, including but not limited to, misrepresenting the rights of the parties in the event of a contract cancellation.

17. Respondents shall fully release all unpaid court judgments entered against Iowa consumers as of the date on which this Assurance is signed, and shall file a full Release and Satisfaction on each judgment with the appropriate courts within 30 days of the signing of this Assurance.

18. This Assurance shall not bar the State or any other governmental entity from enforcing other laws or rules against Respondents relating to any of Respondents' practices, including those alleged in this Assurance.

19. This Assurance shall not be construed so as to affect the legal or equitable rights of any individual citizen to initiate court proceedings against Respondents and to obtain any relief authorized by law or regulation.

Agreed and approved as to form and content:

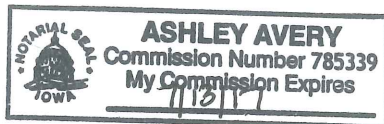
Date 8-05-16

Roof One Exteriors, LLC  
Defendant

  
By: James M. Nelle  
Title: President and Owner

By affixing a signature to this Assurance, the individual signing on behalf of Roof One Exteriors, LLC, James M. Nelle hereby represents that he has legal authority to bind the corporate defendant to the terms and provisions of this Assurance.

Subscribed and sworn to before me this 5<sup>th</sup> day of August, 2016.

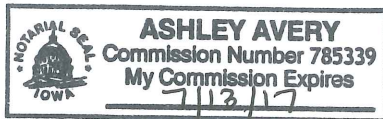


  
Notary Public in and for the State of Iowa

Date 8-05-16

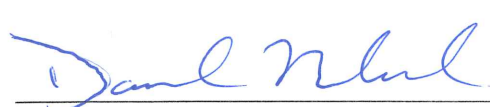
  
James M. Nelle, Individually  
Defendant

Subscribed and sworn to before me this 5<sup>th</sup> day of August, 2016.




  
Notary Public in and for the State of Iowa

Date August 9, 2016

  
David W. Nelmark  
Attorney for the Defendants

Date August 11, 2016

  
Benjamin E. Bellus  
Attorney for the State of Iowa  
Consumer Protection Division